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No. ___ ORIGINAL

In The

Supreme Court of the United States

October Term, 1987

STATE OF MISSISSIPPI,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT AND STATEMENT IN SUPPORT OF COMPLAINT

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COMPLAINT

INTRODUCTION

In its March 1, 1988 opinion in *United States v. Louisiana, et al* Original No. 9 ___ U.S. ___, ___ L.Ed.2d ___, ___ S.Ct. ___ (1988), the Court granted the State of Mississippi and the United States leave without further motion to file a complaint setting forth their claims to any undecided portion of Chandeleur Sound.

The State of Mississippi acting through its Attorney General and pursuant to leave of this Court brings this suit against the United States of America, and for its cause of action states:

I.

The original jurisdiction of this Court is invoked under Article III, Section 2, of the Constitution of the United States and 28 U.S.C. §1251(b)(2).

II.

The Submerged Lands Act, 43 U.S.C. §1301 *et seq.* and this Court's decision in *United States v. Louisiana, et al*, 363 U.S. 1 (1960) confirmed and established the title of the State of Mississippi to the submerged lands beneath the inland waters of the State and the waters of the Gulf of Mexico within three (3) geographical miles of its coastline. The United States retained ownership to the seabed and subsoil area lying more than three geographical miles seaward of the low water mark along the coast and the outer limit of inland water.

III.

Chandeleur Sound is a body of water south of the State of Mississippi and east of the Louisiana mainland. It lies perpendicular to and is separated from Mississippi Sound by Cat Island, West Ship Island and East Ship Island and from the Gulf of Mexico to the east by the Chandeleur Islands.

IV.

The waters of Chandeleur Sound are inland waters of the State of Mississippi and Louisiana such that the title to the submerged lands therein passed to the states on their admissions to the Union. That title was subsequently confirmed and established by the Submerged Lands Act, 43 U.S.C. §1301. (Also see *United*

States v. Louisiana, et al., 422 U.S. 13 and 457 U.S. 726)

V.

The northern entrance to Chandeleur Sound lies between the northernmost of the Chandeleur Islands and the easternmost point of East Ship Island; the waters westward of a line connecting the two points constitute inland waters of the States of Mississippi and Louisiana.

VI.

The United States, despite a long history and practice of claiming all or portions of Chandeleur Sound as inland waters, has published navigational charts showing large areas of Chandeleur Sound as high seas. Such areas occur in the northern Chandeleur Sound more than three miles from the coasts of Cat Island and East and West Ship Islands.

VII.

The United States claims the right, title or interest in the seabed and subsoil of the Chandeleur Sound more than three geographical miles seaward from the ordinary low-water mark of East and West Ship Islands, Cat Island and the intervening limits of Mississippi Sound. These waters north of the Mississippi-Louisiana lateral boundary are inland waters and the title to the submerged lands therein belong to the State of Mississippi. The United States' claim is adverse to and disputed by the State of Mississippi.

VIII.

The coastline for determining the status of Chandeleur Sound and the respective rights of the State of Mississippi and the United States under the Submerged Lands Act is the same as the baseline used to determine the territorial sea under the Convention on the Territorial Sea and Contiguous Zone. Chandeleur Sound constitutes inland waters under the Convention as both historic and juridical bays and through the use of straight baselines.

IX.

By its conduct, the United States casts uncertainty on Mississippi's title to suberged lands and resources in Chandeleur Sound, thereby causing great and irreparable injury to the rights of the State of Mississippi unless the rights of the State of Mississippi are declared and established by this Court.

WHEREFORE, the State of Mississippi prays that the defendant be required to answer this complaint, that the matter be referred to a special master for the purpose to conducting necessary hearings, taking evidence and submitting a report to this court, and that after due proceedings, a decree be entered declaring the rights of the State of Mississippi as against the United States in the subsoil and seabed underlying the waters of the Chandeleur Sound north of the Mississippi-Louisiana lateral boundary and enjoining the defendant, its privies, assigns, lessees and other persons claiming under it, from interfering with the aforesaid rights of the State of Mississippi.

Respectfully submitted,

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STATEMENT IN SUPPORT OF COMPLAINT

The present action is to establish Mississippi's boundary in the vicinity of Chandeleur Sound south of Mississippi Sound and north of the Mississippi-Louisiana lateral boundary.

In its opinion of March 1, 1988 in *United States v. Louisiana, Original No. 9*, the Court stated that it was concerned there only with Mississippi Sound and not Mississippi's rights in Chandeleur. The Court stated its unwillingness to determine on the record before it at that time the extent of Mississippi's rights south of Mississippi Sound without the parties' complete agreement. Accordingly, it overruled the State's exceptions

without prejudice to advance its claims in the vicinity of Chandeleur Sound in a separate proceeding. To facilitate the resolution of any question that might remain as to Chandeleur Sound, the Court granted leave to both the United States and the State of Mississippi to file a complaint with this Court, without further motion, setting forth a claim to any undecided portion of Chandeleur Sound.

Mississippi contends that Chandeleur Sound, including the area south of Cat Island and East and West Ship Islands constitutes inland waters under the Submerged Lands Act, 43 U.S.C. §1301, *et seq*. In that Act, Congress confirmed to each state title to the lands beneath navigable waters within the state's boundaries. (See §1311(a)). It further granted each coastal state a seaward boundary three geographical miles distant from its coastline. The term "coastline" as used in the act is defined as "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland water." (See §1301 (c)).

The Act did not define the terms "inland waters" or "open sea" but left that task to the courts. The Court for purposes of the Submerged Lands Act adopted the definitions provided in the Convention on the Territorial Sea and the Contiguous Zone, [1964] 15 UST (pt. 2) 1607, T.I.A.S. No. 5639 for defining inland waters. A body of water may qualify as internal waters as a juridical bay under Article 7 of the Convention or under Article 4 by the use of the straight baselines method where the coast is fringed by a group of islands. The Convention further recognizes waters as internal where

the coastal state has continuously exercised authority over an area with the acquiescence of foreign nations. *United States v. Louisiana,* 470 U.S. 93, 102 (1985).

The State of Mississippi submits that the United States has long claimed Chandeleur Sound as inland waters over a long period of time with the acquiescence of foreign nations. This Court in its decrees in *United States v. Louisiana, et al,* 422 U.S. 13 and 452 U.S. 726 has recognized the waters in Chandeleur Sound landward of the decreed baselines as inland waters and confirmed title to the submerged lands south of the Mississippi-Louisiana lateral boundary in the State of Louisiana.

Likewise, in *United States v. California* 381 U.S. 139 (1965), the Court took note of the United States' claim to Chandeleur Sound as inland waters. A similar claim was made to Chandeleur Sound in *United States v. Louisiana,* 363 U.S. 1, 66, n. 108 (1960) and confirmed in a later stage of the proceeding, See: 394 U.S. 11, 67, 87 (1969). In a letter dated June 6, 1972, the Chief of the Marine Resources Section of the Justice Department stated that although the United States now takes the position that Chandeleur Sound is for the most part high seas it had previously taken the position that it was internal waters on the theory that it was "fictitious bay". This Court held that a fictitious bay "is merely the configuration which results from drawing baselines from the mainland to a string of islands along the coast." (394 U.S. 11, p. 72, n. 96). Such practice by the United States is evidence not only of historic title, but use of a straight baseline method.

Likewise, this Court has recently recognized the United States' long standing practice applying a "ten-mile" rule to enclose as inland waters those areas between the mainland and offlying islands so closely grouped that no entrance exceeded 10 geographical miles. The Court held the ten-mile rule represented the publicly stated policy of the United States since the Alaska Boundary Arbitration in 1903. *United States v. Louisiana, et al*, 470 U.S. 93, 106-107 (1985). Prior to 1969 the United States had recognized Chandeleur Sound as inland waters under various formulations.

CONCLUSION

For the foregoing reasons, the State of Mississippi submits that this proceeding should be referred to a Special Master to conduct hearings, take evidence, and recommend a proper boundary and coastline for the State of Mississippi in the vicinity of the northern part of Chandeleur Sound.

Respectfully submitted,

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